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In re Application of	:	
EDSTROM, Tomas	:	
U.S. Application No.: 09/530,394	:	DECISION ON PETITION
PCT No.: PCT/SE98/00941	:	TO REVIVE ABANDONED
International Filing Date: 20 May 1998	:	APPLICATION UNDER 37
Priority Date: 23 June 1997	:	CFR 1.137(b)
Attorney's Docket No.: SUNDS-112	:	
For: BINDING MEANS	:	

This decision is issued in response to applicant's "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed on 26 April 2000. Applicant has paid the required petition fee.

BACKGROUND

On 20 May 1998, applicant filed international application PCT/SE98/00941 which claimed a priority date of 23 June 1997 and which designated the United States. On 30 December 1998, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 13 January 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 23 December 1999.

On 26 April 2000, applicant filed the Petition For Revival considered herein, with accompanying materials.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section

must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c), of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, a copy of the international application had already been transmitted to the USPTO by the IB. The "required reply" was therefore payment of the basic national fee. The Form 1390 Transmittal Letter submitted by applicant with the Petition For Revival on 26 April 2000 included the authorization to charge Deposit Account No. 12-1095 for the basic national fee. Thus, applicant has made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 23 December 1999. Accordingly, applicant has submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition For Revival provided authorization to charge Deposit Account No. 12-1095 \$1,210 for the petition fee. Item (2) is satisfied.

As for item (3), the Petition For Revival expressly states that the "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." Item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition For Revival is granted.

The Petition For Revival was accompanied by an executed declaration in compliance with 37 CFR 1.497(a) and (b), and the Form 1390 submitted authorized a charge for "any additional fees which may be required." Based on this authorization, Deposit Account No. 12-1095 has been charged \$130 as the surcharge for filing the declaration later than 30 months from the priority date. Accordingly, as of 26 April 2000, applicant had complied with the requirements of 35 U.S.C. 371(c).

CONCLUSION

Applicants' Petition For Revival is **GRANTED**.

The application has an international filing date of 20 May 1998 under 35 U.S.C. 363 and a date of 26 April 2000 under 35 U.S.C. 371(c) and 102(e).

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, including the mailing of a Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).



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